

## Ageing Behind Bars, with Particular Reference to Older Women In Prison

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**Summary:** Since the 1980s, prison officials, policy makers and researchers have witnessed an astonishing phenomenon in the USA and the UK: increasing numbers of older adults are entering the criminal justice system and in particular prison, finding themselves locked behind steel doors and razor wire fences. So much so that researchers and policy makers are beginning to turn their attention to policy issues such as economic costs, housing, end-of-life issues and institutional management of older offenders. This paper discusses what is currently known about older persons in prison, with particular reference to women prisoners, and gives recommendations as to how to respond to these people's needs.

**Keywords:** Older women, older prisoners, prisons, alternatives to imprisonment, human rights.

### Introduction

This article draws on research from the USA and the UK and examines how these countries are responding to the needs of an ageing prison population. The aim is (1) to examine the rising numbers of older women in prison by examining the ways in which the USA and the UK are responding to the needs of these prisoners, and (2) to identify best practice models and emerging policies to manage efficiently the special needs of older female prisoners. To conclude, this paper gives a series of policy recommendations addressing the needs of the ageing prison population. For the purpose of this article, the term 'older' denotes a person aged 50 or over detained in a prison institution.

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I begin with quotes from two participants in my study. One had already spent 10 years in prison, and another had five years to serve. The first quote highlights how older women are placed in the shadows of prison life in terms of policy and facilities:

*No specific thought is given to people who are in our age category. Thought is given to young offenders. It is given to lifers. It is given to sort of other categories; it is not really – they don't really think about people of our age group and our families. I appreciate we are a minority, but I think a number of people you have interviewed would say we are a significant minority, and presumably will continue to be. I do think they [the prison estate] need to address some of those aspects. They [the prison estate] need to address the problems of people who aren't a 100% fit, but who on the outside had normal jobs. (emphasis added)*

The second quote comes from a woman who has spent five years of a 10-year sentence in prison:

*Of course being an older person in jail you're in no man's land. (emphasis in original)*

The literature available on older offenders is predominantly American-based research that focuses on older male offenders in the USA (Aday, 1994a, 1994b, 2003; Newman, 1984). In contrast, there has been only one study in the UK that addresses the needs of the older female prison population in England and in the USA (Wahidin, 2004; Wahidin and Aday, 2010).

### **So who are they?**

There are different types of offender:

- the older first-time offender currently serving a term of imprisonment
- the older offender who has had previous convictions but has not served a prison sentence before
- the recidivist who may have spent a significant amount of her or his life in and out of prison
- prisoners fulfilling a life sentence who have grown old in prison
- long-term inmates.

Although the crimes committed by older offenders mirror those of young offenders, the older female prisoner cohort is different in terms of their health and social care needs, individual adjustment to institutional life, maintenance of kinship networks, resettlement needs, and end-of-life issues. In consequence, they pose specific challenges to the prison system regarding custody, rehabilitation and release.

### **Ageing and imprisonment**

Much of the debate on older offenders has been around how to define 'old' in the context of the prison population (Cullen *et al.*, 1985; Phillips, 2005). Definitions of 'elderly', 'elder' or 'older' can produce information that at first appears contradictory. Official statistics on the age breakdown of offences and prison statistics in the UK (see Home Office, 1997a, 1997b) use a wide spectrum of ages between 21 and 59 or simply give figures for prisoners aged 21 and above. Some researchers have defined older prisoners as those who are 65 years of age and older (Newman, 1984), 60 (Kratcoski and Babb, 1990) or 55 (Goetting, 1983, 1992). However, studies such as those by Phillips (1996, 2005), Eastman (2000), Wahidin (2002, 2004), Aday (2003), Howse (2003), The Prison Reform Trust (2008, 2010), and Mann (2008), together with statutory bodies such as the American Department of Justice and prison units for older prisoners in the UK, have used 50–55 as the threshold age to define when one becomes an older prisoner. This definition is supported by the fact that offenders experience what is known as 'accelerated' ageing, so that a typical offender in their 50s has the physical appearance and accompanying health problems of someone at least 10 years older in the community.

Studies have shown that on average the cost of keeping an elder in prison runs over three times that of a young adult (Aday, 2001; Dubler, 1988). The specialised medical care for older prisoners varies from simple needs such as hearing aids and dentures to more expensive items such as high-cost prescription medication, prosthetic devices and wheelchairs. At the high end of the cost spectrum are the needs of Alzheimer's sufferers and critically or terminally ill prisoners (Cooney and Braggins, 2010). For these reasons, Morton (1992) and prison health-care personnel and prison officers in the UK (Wahidin and Aday, 2005) stipulate that 50 is the ideal starting point to initiate preventive health care and is the point to take appropriate measures to

reduce long-term medical costs for older offenders. At the same time, the assessments of care and support issues relating to custody for an ageing prison population are only just beginning to develop. Discussion has begun to emerge in the UK, following the first report to be commissioned by the Her Majesty's Chief Inspectorate team on older prisoners, entitled *No Problems – Old and Quiet* (Her Majesty's Chief Inspectorate of Prisons (HMCIP), 2004), and the later report, *Older Prisoners in England and Wales: A Follow-up to the 2004 Thematic Report* (HMCIP, 2008).<sup>1</sup>

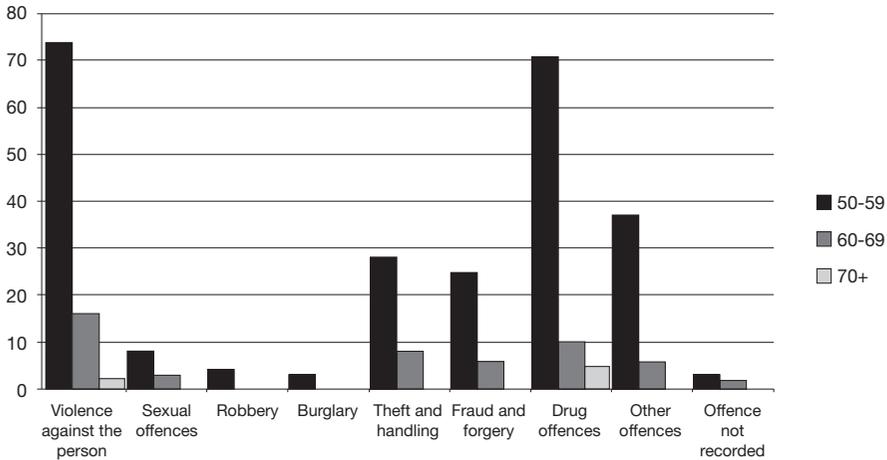
### **Older prisoners in the UK**

Of the 85,368 prisoners who were held in prisons in England and Wales on 31 March 2010, 8120 people were age 50 and above, representing 9.5 per cent of the total prison population. There were 369 women over 50, representing 9% of the total female prison population, and there were 7,751 men in November 2001 (Ministry of Justice, 2010). Over the past 10 years the older male and female prison population has doubled and the long-term trend is for the population to continue to rise. The fastest growing age group in the prison estate is between 60 and 69 (NOMS, 2008). As this paper argues, their needs are often overlooked and unmet.

In terms of offences committed in England and Wales, the majority of the over-50 female prison population are serving sentences of four years and above; the second highest category is 12 months to four years. The overall increase in the older prison population cannot be explained purely by demographic change or explained by a so-called 'elderly crime wave'. It is a consequence of harsher sentencing policies, which have resulted in courts sending a larger proportion of criminals aged over 50 to prison to serve longer sentences (Howse, 2003; Wahidin and Aday, 2005). This has particularly been the case in relation to those convicted of sex offences and drug trafficking. Figure 1 shows categories of offences for women over 50 in England and Wales.

<sup>1</sup> The purpose of Her Majesty's Inspectorate team is to provide independent scrutiny of the conditions for and treatment of prisoners. Her Majesty's Inspectorate of Prisons for England and Wales (HMI Prisons) is an independent inspectorate that reports on conditions for and treatment of those in prison, young offender institutions and immigration removal centres. The Chief Inspector reports to the government on the treatment and conditions for prisoners in England and Wales and other matters.

**Figure 1.** Range of offences committed by women over 50 in England and Wales. Source: UK Ministry of Justice (2010)



### Management challenges of ageing prison populations: The response of the UK

In the case of the older prison population in England and Wales, it is evident in the report *No Problems – Old and Quiet* (HMCIP, 2004) that people aged 50+ are a significant group within the prison population. However, the subsequent report (HMCIP, 2008) found that many of the key recommendations made in the earlier document had not been acted upon. For example, one of the key areas identified by HMCIP (2004) concerned the extent to which the prison environment was failing to reflect the needs of those with age-related impairments and disabilities. The Inspectorate Team found that in the women's prisons there were no separate regimes or age-specific activities for older women. However, a number of male prisons had special units or wings and tailored activities, and HMP Norwich is the only purpose-built prison in England and Wales that caters specifically for the healthcare needs of older men. Another key area for concern was the general level of health of older prisoners and healthcare provision, which will be discussed later. In some cases, prison healthcare centres were being used inappropriately to house older and/or disabled prisoners. Mental illness is a major issue. Over half of all older prisoners have been diagnosed with a mental illness, the most common being depression, which can itself emerge as a result of imprisonment (Prison Reform Trust, 2008, 2010).

In the following quote, the over-use of disciplinary control is evident and inappropriate in relation to her medical condition. Una, a first-time offender in her early sixties, after being in prison for only two months, recalls her experience of recovering from a heart attack brought on by the stress of the trial. She found herself handcuffed and chained to two male officers, suffering from a coronary attack and unable to move.

*I was taken onto the coronary unit from the hospital. The family came in and I'm wired up in the coronary unit and my daughter just burst into tears because I was handcuffed and chained to an officer. There were two officers sat at the foot of my bed. I will never ever forgive the system for that. (emphasis in original)*

She later goes on to ask:

*What security risk did I pose? The doctor pleaded with them to take the handcuffs off and the answer was, 'we can't, we're sorry, it's the system'. But what does it do to your family to see you handcuffed, when they know I've never hurt anybody in my life?*

These examples display the intransigent power of the penal system, impressing on both prisoners and the public that not only do prisoners have no rights, but not even the usual professional prerogative exercised by doctors and nurses holds sway when the patient is a prisoner. Research has shown that women who are infirm or are convalescing are denied association and exercise, and incur a loss in pay, which in turn reinforces their sense of isolation. The unknown world of prison and the lack of care received can and does damage health as well as increasing feelings of anxiety and dislocation. The fear of being ill in an alien environment, in which bureaucratic prison time ticks slowly, reinforces for elders a common fear: that of dying alone in prison (Deaton *et al.*, 2010). The distress caused by such traumatic experiences cannot assist the convalescing ill. In these circumstances and with such experiences not being uncommon, one has to ask whether the prison service can fulfil a duty of care.

Prisons have not traditionally been constructed to house older persons, or to respond to the changing physical and social needs that ageing is likely to bring. As a result, health and social care tends to be the

most critical concern for older prisoners and those responsible for managing their needs while in prison. Most prisons departments view the rising cost of providing adequate healthcare as the biggest challenge in meeting the needs of an ageing prison population. Ageing prisoners come into the system bringing a variety of high-risk behaviours requiring immediate attention. Research has shown that prisoners are likely to have an earlier onset of chronic health and social care needs than the general population. The most common age-related illnesses are arthritis, hypertension, and cardiovascular and respiratory conditions. Moreover, the female estate has to address gender-related health issues such as providing facilities on par with provision found in the wider community on topics such as the menopause, mammograms or cervical cytology screenings. Of the establishments included in the research, not one conducted systematic cervical cytology or breast screening (Wahidin, 2004), despite the HMCIP thematic review stating that ‘women prisoners come from a group with many of the risk factors for cervical cancer’ (1997, p. 108). Healthcare provision under the National Health Service is supposed to be applied equally to all individuals regardless of whether they are serving a custodial sentence.

As a whole, this population has a higher incidence of chronic disease and significant functional disability than similar age groups on the outside. The health expenditure for the older female offender is hard to map, given, as Dr Piper, Senior Public Health Adviser in Prison Health states, that ‘expenditure cost for age cohorts in prison is not known and the cells are not a data set used by the prison health service’ (personal communication, 2009).

Thus, without UK data on current healthcare expenditure, one has to look to studies conducted in the USA to understand the future resource implications for an older prison population. In 1997, the daily medical care for the general prison population in the USA cost \$5.75 per offender nationwide (Neeley, Addison and Craig-Moreland, 1997). The cost of caring for prisoners over the age of 50 was nearly three times higher, at \$14.50. Older prisoners with age-related illnesses are significantly more costly to care for than their younger counterparts.

Thus with a predicted rise in the number of offenders who are older, sicker and serving longer sentences, coupled with institutions’ over-stretched resources, it is reasonable to argue that if we fail to address the needs of older people in prison we will be facing an inevitable crisis (Prison Reform Trust, 2008). As more cohorts enter the latter stages of

life, the age revolution will significantly affect all facets of the criminal justice system.

Since 2004, prisons in England and Wales have been subject to the Disability Discrimination Act (DDA), which requires the Prison Service to take all reasonable steps to ensure that prisoners with disabilities can access services. In consequence, the Prison Service has issued orders (PSO 2855 and PSO 8010) detailing the steps prisons should take. The National Service Framework (NSF) for Older People (Department of Health, 2001) also identifies the need for prisons to provide for the health and social care needs of prisoners over 60. Yet it is evident from the official reports in this area that few prisons are reaching the standards required in legislation, though progress can be identified in some cases (HMCIP, 2008; Prison Reform Trust, 2008).

In prison, as illustrated above, the vulnerabilities of age are exacerbated by the lack of age-related facilities. Furthermore, the lack of continuity of programmes from the outside, such as healthcare, structured activities for the non-working prison community, and an 'adequate' living allowance for women of pensionable age in prison, increases the pains of imprisonment as the disparity between the working younger prison population and the non-working population is magnified (Hancock and Sunderland, 1997).

The former Chief Inspector of Prisons, Sir David Ramsbotham, states:

As I go around the prison estate I am finding an increased number of elderly prisoners, all of whom are classified as being retired, which means that they do not qualify for work. Without qualifying for work they do not get wages and, therefore, they live in pretty impoverished circumstances. Some of them need special facilities, including medical facilities, and these too are lacking. (cited in Eastman, 2000)

Prisoners in later life require improved health services, better pensions, different types of housing and a variety of aids when they become infirm. But they also need a reason for using these things. It is not surprising that older people in prison experience isolation and alienation when they are denied access to the sources of meaning that are valued by society in which they live. The lack of help and rehabilitation can only exacerbate the almost inevitable poverty that older people will face as a result of their imprisonment. The thematic review on older prisoners by HM Inspectorate of Prisons, published in December 2004, found little

evidence that older offenders' needs were either being met or that provision was being made for them. The report concluded by stating that 'prisons are primarily designed for, and inhabited by, young and able-bodied people; and in general the needs of the old and infirm are not met' (HMCIP, 2004).

Unless the Prison Service of England and Wales begins to recognise the needs of the older offender, mistreatment and neglect will be a pervasive facet of prison life. For older women who are already incarcerated as well as those who are to be imprisoned, there must be clearly articulated policies addressing their special needs while in custody and as they prepare for release. A discussion as to the possible scope of these policy recommendations will be the topic of the final part of the paper.

### **Future issues**

As the number of older women offenders participating in the criminal justice system increases, developing social policies to respond effectively to the group will become critical. The programmes and policies now in place vary from country to country and this will most likely continue. Economic resources, sentencing guidelines, policy priorities and the variation in the number and diversity of older offenders contribute to these differences (Cullen *et al.*, 1985). Some have suggested that older offenders should be treated differently to their younger counterparts at all stages of the criminal justice system (Aday, 1995, Howse 2003). In particular, given the mental and physical characteristics of the older offender, the purpose of legal sanctions may be different, leading to a de-emphasis on restraint and deterrence (Mara, 2002). Such an alternative would create a separate and distinct system that differs from the current adult system in philosophy, sentencing, purpose and technique (James, 1992). Thus, questioning whether certain types of sentences for this cohort amount to 'cruel and unusual punishment' raises the question of whether it would be fairer to take account of the probable years remaining in the offender's life when deciding a sentence length.<sup>2</sup>

<sup>2</sup> Cristina Pertierra (1995) presents a series of cases brought to the American Court of Appeal in which elderly offenders, under the Eighth Amendment, have claimed that, given their ages and life expectancies, the sentences imposed amount to life imprisonment and are thus disproportionate to the crimes.

It can be argued that a 15-year sentence for a 65-year-old is practically a life sentence, while a 25-year-old who spends 15 years in prison still has at least a 30-year life expectancy after s/he leaves prison. This condemns the older offender to spend a greater percentage of her or his remaining life in prison. The disparity could be reduced by giving older offenders sentences that represent the same percentage of their remaining lives as those given to younger persons. For example, the average 25-year-old woman can expect to live for 46.9 more years. If such a person were convicted of a crime that carries a 20-year prison term, she would spend approximately 43% of her remaining life behind bars. A 65-year-old is expected to live 14.2 more years. A 20-year sentence would thus represent 141% of this defendant's remaining life, a *de facto* life sentence. By contrast, 43% of her life would be only 6.1 years (see James, 1992). In a landmark judgment from the USA, in the *State v. Waldrip* case, the judge reduced a 67-year-old defendant's sentence for voluntary manslaughter from five years to life to five to 10 years, recognising that even the minimum term of five years could theoretically be a life sentence because of the defendant's age (1992). It can be argued that if an older person does not have her or his sentence reduced, s/he will experience a greater punishment than a younger person sentenced for committing the same crime.

Moreover, to alleviate some of the problems associated with imprisonment, the prison authorities should be turning their attention to literature relating to residential homes or assisted living facilities (Aday, 1999; Atherton, 1989; Coleman, 1993; Hockey, 1989). There are many simple measures which could be taken that would allow older offenders control over their immediate physical environment. In addition, due to the impairment of sight, hearing, memory and reflexes, as well as the general slowing of movement and mental responsiveness, elders need to be cared for by staff members who are specifically trained in the needs of older people in prison. For prisoners who will spend the rest of their lives in prison, managing their healthcare will become a critical issue. Prison officials will be faced with the problem of finding suitable work and recreational activities so prisoners can pass the time in reasonably good health. Of course, prisoners who have spent a greater portion of their lives incarcerated will need intensive discharge planning and community placement orientation. Locating family or community agencies that will accept ageing prisoners eligible for release will also be a challenge.

In 2007, Baroness Jean Corston was appointed by the UK government to lead an inquiry into the treatment of women 'with particular vulnerabilities' within the criminal justice system in England and Wales. While the Corston Report (2007, p. 1) did not agree that women should never be held in custody, Baroness Corston was dismayed at the 'disproportionate' and 'inappropriate' use of imprisonment for women, concluding that the nature of women's imprisonment needs to be 'radically rethought' by creating 'a distinctive, radically different, visibly led, strategic, proportionate, holistic, woman centred approach' (p. 79), yet the report failed to address the needs of older women who come into conflict with the law.

In responding to the needs of older women and women in general who are in prison, there is a need to develop gender- and age-appropriate provision in prisons and in the community. As Gelsthorpe argues, this is 'an important prerequisite to promoting social justice, social inclusion and citizenship and the responsibilities and relationships which flow from them may enhance offenders' reintegration and help promote their desistance from crime' (2007, p. 54).

While it is obvious that the criminal justice system is becoming more sensitive to the special needs of ageing offenders, barriers continue to exist that interfere with the ability for prison officers to respond effectively. Most local governments in the UK are faced with the rising costs of medical care and overcrowding. With the continued increase in criminal activity among the older population as a whole, learning more about the relationship between crime and ageing, and about institutional adjustment, recidivism and release, seems imperative (see Wahidin and Cain, 2006). The limited knowledge concerning older women in prison and the absence of relevant policies and planning in this area in England and Wales, but also in other jurisdictions, leads one to suggest that the criminal justice system should be turning its attention to some of the following recommendations.

- An examination of existing formal and informal practices regarding women in later life, as the first step in developing an explicit and integrated set of policies and programmes to address the special needs of this group across jurisdictions. This will enable a national strategy to be implemented and good practice to be identified.
- To develop a comprehensive and gender-sensitive programme for older offenders that fosters personal growth, accountability and value-based actions that lead to successful reintegration into society.

- To prepare all personnel of the criminal justice system to understand and appropriately address gender- and age-specific topics and issues as discussed.

In terms of addressing the needs of older women in the criminal justice system, prison should be able to institute the following.

1. Adopting the age of 50 as the chronological starting point of the definition of older persons in relation to those in the criminal justice system.
2. Compiling of comprehensive data on the over-50s, addressing older-women-specific topics and issues from arrest to custody through to resettlement.
3. Identifying the costs of long-term incarceration of infirm prisoners and the potential risks of early release.
4. Introducing or expanding specific programmes, policies and facilities geared towards the needs of older women who come into conflict with the law.

## **Conclusion**

This article has presented some of the issues and lessons to be learned that an older female prison population brings. In an increasingly pressurised prison system, the needs of older female offenders are likely to be overlooked, and it is only by examining their needs that we can begin to implement best practice and prevent further accusations of injustice and lack of care for this particular group.

If the focus of imprisonment is to assist offenders to lead law-abiding and useful lives, the Prison Service should be looking at ways to minimise the sense of isolation and helplessness that older women and men experience behind the walls. Thus, in order to comply with the Human Rights Act and the European Convention on Human Rights, policy makers must address the needs of the ageing prison population or be accused of discrimination on the basis of age – or, at worst, of contravening Article 2 (right to life) and Article 3 (right to be held in conditions that do not amount to inhuman and degrading treatment).

It is well known that the proportion of the older general population has increased. Research, policy initiatives and programmes targeted at the older criminal have not kept pace. Age will be considered one of the

biggest issues that will continue to affect the criminal justice system and prison healthcare in the future. At the time of writing the Prison Service of England and Wales does not have a national strategy for this cohort, and even though the Disability Discrimination Act (2005) now applies to prisons, few establishments are compliant. It is as Vivian Stern argues: that in every country, ‘there is a prison system for men, and women are everywhere tacked on in an awkward after-thought’ (1998, p. 141). Unless this changes, older women who come into conflict with the law will remain in the shadows of prison life.

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